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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Items 8 and 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED
TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN
ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER
DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Lawyers Committee for Human Rights,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which
is circulated in accordance with Economic and Social Council
resolution 1295 (XLIV).

[27 January 1997]

1. The Lawyers Committee for Human Rights wishes to raise its concerns about denials of due process and the rule of law in China. These concerns are fully set out in a 1996 Lawyers Committee report entitled Opening to Reform: An Analysis of China's revised Criminal Procedure Law, which examines important revisions to the Criminal Procedure Law (CPL) which took effect on 1 January 1997.
2. The new law on criminal procedure offers some positive opportunities, at the same time we believe it underscores some fundamental problems with the Chinese legal system. An important improvement in the new law is the greater concern for the protection of defendants' rights. The law also sets a stricter standard against which the Government's actions, including those that contravene the revised CPL, can be judged.

3. These reforms must also be viewed in the context of a legal system which, in many fundamental ways, does not comply with international standards contained in the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Recommendations

4. The Lawyers Committee believes there are several areas where it is necessary and feasible for China to enact additional reforms:

- (i) All forms of detention and arrest ("coercive measures" under the CPL) should be subject to prompt judicial review. Police discretion to hold suspected criminals without prompt judicial review should be eliminated.
- (ii) Anyone subject to any form of detention or arrest should have the right to bring a habeas corpus proceeding to challenge that detention or arrest.
- (iii) A genuine system of bail should be established. Subject to reasonable exceptions, anyone awaiting trial should be entitled to release on bail.
- (iv) Detainees' right to communicate with their families should be fully respected. Police discretion to dispense with notification of detainees' families should be eliminated.
- (v) The grounds for non-custodial forms of detention under the CPL ("supervised residence" and "taking a guarantee and awaiting trial") should be clearly specified to avoid their indiscriminate and arbitrary use.
- (vi) All suspects should be given notice of their right to counsel immediately upon detention or arrest. Police discretion to restrict suspects' access to counsel on grounds of "State secrets" should be eliminated. Current proposals simply to redenominate such crimes as "crimes endangering State security" will not suffice to bring China into compliance with international law, particularly if the grounds for such crimes are expanded to incorporate a range of legitimate contacts between Chinese and non-Chinese citizens.
- (vii) All suspects and defendants without the means to pay for a lawyer should be entitled to free legal assistance. Inability to afford a lawyer should give rise to mandatory rather than merely optional appointment of counsel.
- (viii) The confidentiality of lawyer-client communications should be strictly respected. Police discretion to be present at lawyer-client meetings should be eliminated.

- (ix) All determinations of criminal responsibility should be made after a public hearing before an independent tribunal. All sources of interference with judicial independence should be eliminated.
- (x) Prosecutorial discretion to make de facto determinations of guilty through decisions "not to prosecute" should be sharply limited and subjected to judicial oversight. Administrative sanctions such as "reeducation through labour" which circumvent the formal criminal justice system should be eliminated. The recent revision of the Criminal Procedure Law eliminated one major method of non-judicial determination of guilt (so-called "exempt from prosecution"). According to the same logic and principles of international law, the Government of the People's Republic of China should now eliminate "reeducation through labour".
- (xi) The grounds for closing trials to the public should be clearly specified and conform to the requirements of international law.
- (xii) All suspects and defendants should be presumed innocent until proven guilty. Any invidious distinction between defendants found not guilty "on the basis of the law" and those found not guilty "due to insufficient evidence" should be eliminated.
- (xiii) All defendants should be given adequate time to prepare their defence at trial. Appointed counsel should be made available at all stages of the criminal process rather than shortly prior to trial.
- (xiv) Statements gathered through torture should be strictly inadmissible as evidence. At present, Chinese law forbids the use of torture and provides sanctions against torturers, but it contains no procedure mandating the exclusion of evidence gathered through such illegal and inhumane methods.
- (xv) Defendants should have the opportunity to cross-examine adverse witnesses and the right to call witnesses under the same conditions as the State. The practice of permitting the use of transcripts rather than the live testimony of witnesses should be discontinued.
- (xvi) Defendants' right to appeal should be strictly safeguarded. Loopholes in the CPL which permit courts to impose heavier penalties on appeal should be eliminated. The practice of lower courts' seeking instructions from higher courts prior to rendering their verdicts should be ended.
- (xvii) Remedies for violations of suspects' and defendants' rights should be strengthened. Official discretion to refuse to investigate and remedy such violations should be sharply curtailed.

- (xviii) The Government of the People's Republic of China should eliminate the provisions of the Chinese law which sanction the non-violent expression of political opinion as "counter-revolutionary crimes".

5. The Lawyers Committee urges the Commission on Human Rights to closely monitor and evaluate the Chinese criminal justice system. Such scrutiny by the international community will help promote China's compliance with international norms.

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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Lawyers Committee
for Human Rights, a non-governmental organization in
special consultative status

The Secretary-General has received the following written statement
which is circulated in accordance with Economic and Social Council
resolution 1295 (XLIV).

[27 January 1997]

1. As part of its activity during its previous session, the Commission on Human Rights helped to promote a process which has resulted in an accord between the Government of Colombia and the United Nations High Commissioner for Human Rights to help promote efforts by the Government to improve the human rights situation and to report to this Commission, through the High Commissioner, on the effectiveness of those efforts.
2. At the time of last year's session Colombia was already one of the most violent nations in the world. However, the stakes facing the Commission and Colombia's people are much higher now. The human rights situation has deteriorated significantly, and those institutions responsible for protecting and promoting respect for human rights are either in a process of decomposition or are under direct attack by sectors of the Government. If these attacks succeed, Colombia will have effectively relinquished its status as a State ruled by laws intended to limit arbitrary and autocratic exercise of authority.

3. While the human rights problem in Colombia has many aspects, there are certain unmistakable institutional crises whose proper resolution is vital. The Lawyers Committee believes that attention to these matters must be at the top of the agenda of the High Commissioner's field office. How the Government proceeds on these issues bears directly on the sincerity of its numerous professed commitments to human rights, and will be of paramount importance to the Commission as it continues to determine its own actions in respect of Colombia. The response of the field office in this regard should also be carefully reviewed by this Commission as it evaluates the utility of the office in promoting and protecting human rights.

4. Among the problems in Colombia of particular urgency are the following.

Paramilitary structures and their relationship to the armed forces

5. According to numerous sources in Colombia, the phenomenon of paramilitary violence can be largely explained as the result of a deliberate strategy by the armed forces. Paramilitaries occupy strategic areas, clear them of supposed dissidents, suspected sympathizers of the opposition or the armed guerilla groups through violence and intimidation, and operate virtually unmolested, and at times in concert with the armed forces.

6. In addition to their military significance, paramilitaries have provided an element of deniability, often exploited by several Colombian governments, regarding official responsibility for violent acts against civilians. Figures compiled by Colombian human rights organizations for the period October 1995-September 1996 indicate that paramilitaries are responsible for more than 60 per cent of those homicides, disappearances and extrajudicial executions for which the responsible party can be identified. Although there remain many cases in which the perpetrators have not or cannot be identified with confidence, a pattern emerges by which the declining percentage of crimes attributed to the armed forces themselves coincides with the rise in those linked to the paramilitaries.

7. Paramilitary violence has had the intended effect of driving large numbers of civilians off their land and joining the swelling ranks of Colombia's displaced. For example, paramilitaries are believed responsible for the displacement of between 170 and 260 peasant families from Bellacruz (Cesar department) last February. Various Colombian press accounts attribute from 8 to 23 murders and 5 disappearances in Bellacruz to the paramilitaries. As this Commission is well aware, displacement inevitably leads to sequelae of human rights and humanitarian concerns for the affected populations; whose security and well-being are among the other unmet responsibilities of the Colombian State.

8. Paramilitary violence is open and notorious, depriving Colombian officials of the excuse that the responsible groups cannot be confronted.

The failure of civilian control over the military

9. At the last session of this Commission, the Lawyers Committee and others reported on the failure of the Government of Colombia to address the problem of institutionalized impunity which has resulted from the military's insistent

and over broad application of military jurisdiction to alleged human rights abuses. Despite the much publicized commission established by the Government to propose modifications to the military justice code, military jurisdiction has been expanded, not limited. In the face of verifiable facts, the Government refuses to acknowledge this and has inexcusably sought to convey the opposite impression. In a November 1996 letter responding to a resolution by the European Parliament, the Colombian Ministry of External Relations cited this initiative as a means of strengthening military justice against impunity.

10. In fact, proposed constitutional changes pending before the Colombian Senate seek to accomplish exactly the opposite by obliterating the legal basis for civilian review of military human rights abuses. These changes would strip the Office of the Prosecutor General of its authority to conduct criminal investigations, and the Office of the Ombudsman for Human Rights of its power to conduct civil administrative proceedings - often the only redress available after the military has absolved its own personnel of criminal charges relating to human rights abuses. Civilian courts would also lose their authority to hear petitions for tutela alleging human rights abuses by military personnel; these too would go before military courts. During time of war or "interior commotion", tutela would be suspended.

Increased military power over civilians

11. The military authorities already exercise significant de facto arrest powers in conflict zones. Asserting that they are entitled to treat all suspected subversives as "permanently en flagrante delicto" they claim, contrary to law, that they can make arrests without judicial authorization. This has led to great abuse, particularly in cases before the "faceless" regional jurisdiction. The response of the Colombian authorities bears serious scrutiny. A proposed constitutional amendment would remove the requirement of an arrest warrant whenever, in peacetime, the Government has serious cause to fear disturbances of public order. Instead, the Government itself would order the round-up of those persons regarding whom there are "grave indications that they act against the peace", and detain them for seven days before bringing them before a judge. Another constitutional proposal by the Samper Government would empower the military to perform police functions in civilian criminal cases.

12. The Government has already taken the step of creating, pursuant to emergency decree, numerous "public order zones". In such zones the military assumes the authority over all civilian forces. Human rights groups report that the practice continues even after the expiration of the decree that created the zones.

Distortions of legal process

13. The "faceless" regional court system continues to be characterized by inefficiency and disorganization, which have exacerbated the case backlogs that the system was supposed to resolve. Combined with public order zones, the regional courts have allowed the military to infiltrate the investigative process, from searches and seizures to arrests and interrogations, despite the absence of legitimate legal authority to do so. The substantive ambiguity of the crimes within its jurisdiction have resulted in the prosecution of civic

leaders, social activists and opposition politicians for terrorism related offences, which carry enhanced criminal sentences and are tried via abusive procedures.

Constitutional balance of power

14. In contravention of its numerous promises to work to promote human rights, the Government is attempting to rewrite Colombia's Constitution in order to undermine the separation of powers and checks and balances that are intended to avoid autocratic action. Specifically, the proposed reforms would expand executive discretion to declare and maintain states of emergency, and, as noted above, allocate police powers to the military. The Government seeks to limit the ability of the legislative to oversee states of emergency; and to drastically reduce judicial review of the executive's decision to invoke such states and to legislate under them.

15. In the light of the foregoing, the Lawyers Committee for Human Rights urges the Commission on Human Rights to seek from the High Commissioner for Human Rights a plan of action identifying the areas of priority attention as it assists and reviews Colombian efforts in respect of human rights. These priority areas could include:

- (i) Proposed constitutional changes regarding executive and military authority;
- (ii) Efforts to dismantle paramilitary groups and halt their illegal activities, in particular the violence and intimidation that has led to internal displacement;
- (iii) Key criminal investigations such as those concerning alleged mass disappearances, presumed murder and paramilitary activity by Gen. Farouk Yanine Diaz and Col. Hernando Navas Ruvio; jurisdiction over both cases was denied the Office of the Prosecutor General and handed to the military courts in November 1996;
- (iv) The unwillingness of Colombian insurgent groups to acknowledge the applicability of common article 3 of the 1949 Geneva Conventions to the current conflict, and their failure to state publicly that they will be bound by its norms;
- (v) Efforts by the Office of the Prosecutor General to limit the use of "faceless" prosecutors, in accordance with that Office's resolution 973 committing it to do so.



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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Lawyers Committee
for Human Rights, a non-governmental organization in
special consultative status

The Secretary-General has received the following written statement
which is circulated in accordance with Economic and Social Council
resolution 1295 (XLIV).

[27 January 1997]

1. The peaceful resolution of Northern Ireland's political conflict is at a crucial and difficult moment. Since the end of the 18 month cease-fire, the United Kingdom authorities have applied emergency laws and practices more aggressively. Human rights violations were core to this creation of conflict and their termination remains essential to its successful resolution. Measures which would enhance human rights protections in the jurisdiction are a clear means to facilitate confidence-building, allowing the wider work of determining agreed political structures to take place.

2. In particular, emergency powers in the jurisdiction have been consistently linked to serious human rights violations, fuelling and exacerbating the conflict rather than facilitating its resolution. Basic due process rights continue to be denied to citizens in Northern Ireland. Trials involving those charged with security offences in Northern Ireland are characterized by a number of procedural aspects whose overall effect is to limit protection for the rights of accused persons. These include lower standards of admissibility for evidence, limitations on access to bail, pre-trial detention procedures in contravention of international standards and extended periods on remand for accused persons prior to trial.

3. There are not sufficient grounds for imposing these emergency provisions in international law. The United Kingdom has derogated from its obligations under the European Convention on Human Rights by asserting that the situation in Northern Ireland constitutes a "public emergency threatening the life of the nation". The recent wave of violence and the current level of foreboding are grave and serious matters, but the life of the nation is not threatened, and the ordinary criminal law is sufficient to deal with violence.

4. Second, the emergency law has been demonstrably ineffective in solving the intractable problem of communal violence, either before the 1994-1996 cease-fires, during them or since. Third, the suspension of due process rights, the ending of jury trials, the widespread abuse of detainees and other human rights violations associated with the emergency have stoked deep and bitter resentments on all sides. Emergency laws are not the solution; they are part of the problem.

5. In December 1996 the Lawyers Committee published a report on Northern Ireland, entitled At the Crossroads: Human Rights and the Northern Ireland Peace Process. In that report the Lawyers Committee makes the following recommendations:

I. Emergency laws

- (i) As a pivotal step in the process of building confidence in the legal order in Northern Ireland, all emergency powers should be repealed.
- (ii) The United Kingdom should withdraw its derogation from article 5 (3) of the European Convention of Human Rights and article 9 (3) of the International Covenant on Civil and Political Rights.
- (iii) The implementation of the ordinary law should be given priority. The permanent retention of emergency laws in the guise of ordinary law is inconsistent with international legal standards and counterproductive to the peace process.

II. Intimidation of defence lawyers

(a) Allegations of intimidation

- (i) The United Kingdom authorities should require vigorous and independent investigation of all threats to legal counsel in Northern Ireland. Solicitors who report threats of violence should be accorded effective protection.
- (ii) An independent public inquiry should be held into the murder of Patrick Finucane. The Royal Ulster Constabulary should make a public statement regarding the status of its investigation into the Finucane murder. In 1992, a call for such an inquiry was made at the Sub-Commission on the

Prevention of Discrimination and the Protection of Minorities, by Professor Claire Palley, the independent expert nominated by the Government of the United Kingdom. No such independent inquiry has taken place.

(b) Access to lawyers

- (i) The right to immediate access to counsel of choice should be respected. Detainees should have access to such legal advice during interrogation.
- (ii) The Human Rights Committee also concluded that the use of extended periods of detention, without charge or access to legal advisors, state entry into private property without judicial warrant and the imposition of exclusion orders within the United Kingdom were "excessive". The European Court of Human Rights, in the case of Murray v United Kingdom (February 1996), found that the United Kingdom practice of withholding legal advice from detainees for the first 48 hours of police questioning was in violation of article 6 of the European Convention. The United Kingdom has continued to use the powers and practices criticized by the Human Rights Committee without repeal or modification.
- (iii) Detainees should have regular, constant and confidential access to their solicitors.

(c) Detention practices and conditions

- (i) All interrogations should be audio- and videotaped. Solicitors representing detainees should have access to such audio- and videotapes.
- (ii) The detention centres at Castlereagh and Gough Barracks should be closed down immediately and on a permanent basis. The United Kingdom has failed to heed the recommendation of the Human Rights Committee in 1995, which called for the closure of Castlereagh detention centre in Northern Ireland, noting the Government's own admission that the conditions in which detainees were being held were "unacceptable".

6. The Lawyers Committee strongly urges that the international community pledge its support to the maintenance and protection of human rights in Northern Ireland. It is incumbent on the United Kingdom, as a leading democratic State, to set an example for the world community in its commitment and adherence to human rights protection. Ensuring such protection is a means to foster and nurture the process of confidence-building and peace-making in Northern Ireland.

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